



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Brownell & Company, Inc.--Request for  
Reconsideration  
File: B-225784.4

Date: August 20, 1987

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### DIGEST

Prior decision denying protester's claim for costs is affirmed where protest was dismissed since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

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### DECISION

Brownell & Company, Inc., requests reconsideration of our decision, Brunswick Corporation and Brownell & Company, Inc., B-225784.2, et al., July 22, 1987, 87-2 C.P.D. ¶ \_\_\_\_; in which we denied its claim for proposal preparation costs and the costs of filing and pursuing its protest, in connection with our dismissal of its protest.

We affirm our prior decision.

Brownell's original ground for protest was the allegation that the competing firms that had been awarded contracts for camouflage screen systems were not "separate legal entities" eligible for awards under the solicitation. We dismissed the protest because questions concerning a firm's legal status are matters of responsibility and our Office does not review a contracting officer's affirmative determination of responsibility except in circumstances not present in Brownell's protest. We dismissed as untimely Brownell's post-closing date protest against certain solicitation provisions. See 4 C.F.R. § 21.2(a)(1) (1987). We also held that there was no basis for Brownell's claim for costs, because Brownell's protest was dismissed without a decision on the merits.

In its request for reconsideration, Brownell does not challenge our dismissal of its protest. Rather, Brownell suggests that we should award the firm costs, nonetheless, because it incurred substantial expenses in submitting a proposal for this procurement, and the government has obtained the benefit of competitive pricing for the camouflage screens because Brownell, a new supplier, competed.

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Brownell also argues that its protest raised issues which are factually distinguishable from the protest issues raised in Systems Management American Corp., B-224229, Nov. 10, 1986, 86-2 C.P.D. ¶ 546 -- the decision which we cited as supporting denial of Brownell's claim for costs. In the relevant part of that decision, we explained that where, as in Brownell's case, a protest has been dismissed and, thus, there is no decision on the merits, there is no basis for awarding costs.

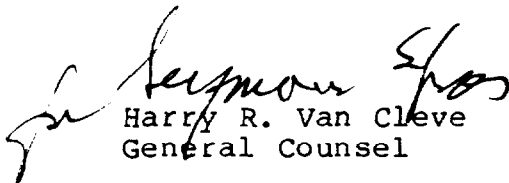
The authority to award a protester or other interested party proposal preparation costs and the costs of filing and pursuing its protest is provided by the Competition in Contracting Act of 1984 (CICA). CICA provides in pertinent part as follows:

"If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of

"(A) filing and pursuing the protest, including reasonable attorneys' fees; and (B) bid and proposal preparation." 31 U.S.C. § 3554(c)(1) (Supp. III 1985).

Under the above statutory authority and the implementing regulation at 4 C.F.R. § 21.6(d) (1987), entitlement to payment of proposal preparation costs and the costs of pursuing a protest is expressly predicated upon a determination by this Office that a solicitation, proposed award, or award does not comply with a statute or regulation. In this case, our Office did not make such a determination since Brownell's protest was dismissed. Since this Office did not determine that the protested awards and solicitation provisions did not comply with a statute or regulation, there is no basis upon which we may declare Brownell to be entitled to the costs which are claimed. See Monarch Painting Corp., B-220666.3, Apr. 23, 1986, 86-1 C.P.D. ¶ 396.

The prior decision is affirmed.

  
Harry R. Van Cleave  
General Counsel